

September 7, 2007

VIA ELECTRONIC DELIVERY

The Honorable Kevin J. Martin, Chairman
The Honorable Michael J. Copps, Commissioner
The Honorable Jonathan S. Adelstein, Commissioner
The Honorable Deborah Taylor Tate, Commissioner
The Honorable Robert M. McDowell, Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Carriage of Digital Television Broadcast Signals: Amendment of Part 76 of the Commission's Rules, CS Docket No. 98-120

Dear Chairman Martin and Commissioners Copps, Adelstein, Tate, and McDowell:

On behalf of Bloomberg L.P., I write to urge you to reject the proposal raised in the above proceeding to expand must-carry requirements. Favoring broadcast programming in this way would impede the digital transition, reduce programming diversity, and directly harm non-broadcast services such as Bloomberg Television ("BTV"). Moreover, as the Commission previously determined in 2001 and 2005, dual must-carry (the only plausible option for cable operators under the proposal) is unconstitutional and inconsistent with the Communications Act.

Launched in 1994, BTV, an independent programmer, was the first 24-hour global financial news channel. BTV is distributed to over 50 million U.S. MVPD households. Distributed on eleven channels around the globe, programmed in seven different languages, BTV provides viewers with a distinct local perspective of global financial events.

Since 1994, BTV has invested significant financial expenditures to develop an innovative service that is popular with a broad base of viewers. Overall, the non-broadcast programming industry spent over \$73 billion over the last five years on programming. *See 2007 Industry Overview*, NCTA, at 15 (2007). Non-broadcast programmers like BTV are leaders in providing programming that consumers demand including news, public affairs, children's, sports, and entertainment programming.

Analog must-carry *already* harms services like BTV. In many markets, particularly the most important large markets, analog carriage remains unavailable to many non-broadcast programmers. As BTV explained previously in this proceeding (*see* our ex parte letters filed on June 5, 2002 and June 7,

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2006), cable operators have expressly told BTV that they cannot carry it on certain systems due to the capacity constraints imposed by analog must-carry. The proposal for expanded must-carry in the above proceeding will only exacerbate this problem.

Under the Commission's current proposal, unless all cable subscribers go all-digital by February 17, 2009 (evidence in the record suggests that this is an impossibility), cable operators would have to dedicate up to 50% more capacity *for each broadcaster's services* than they currently do. This is because a broadcaster would be entitled to have its digital signal downconverted to analog (6 MHz) while also having its high-definition (3 MHz) signal carried as it is broadcast over-the-air. This additional capacity is already being used to carry non-broadcast services such as BTV or non-programming services (*i.e.*, broadband Internet or telephony) that are highly valued by consumers, which necessarily means that unless a cable operator is willing to diminish the quality of its non-programming services (a dubious proposition at best in the current highly competitive MVPD landscape), non-broadcast services like BTV will have to be deleted.

This expanded must-carry requirement would thus force cable operators to drop existing non-broadcast services to make room for duplicative must-carry broadcast programming. In addition, it would severely limit the ability of BTV and other non-broadcast programmers to increase their distribution (and long-term viability), as cable operators would have to devote significant amounts of additional capacity to broadcasters. Whether BTV and other non-broadcast programmers are dropped or simply fail to obtain carriage, the effect would be to reduce program diversity and program quality, thereby harming consumers.

In sum, I urge you to reject the proposed expansion of must-carry rights for broadcasters. There is simply no legitimate reason why broadcasters deserve expanded must-carry rights. Broadcasters and non-broadcast services like BTV should be allowed to compete on an equal footing, based on the merits of their programming. Deciding otherwise would impede the digital transition, reduce programming diversity, and cause direct harm to non-broadcast services like BTV.

Please let me know if you have any questions.

Respectfully submitted,

/s/ Keir Ashton

Keir Ashton, Counsel for Bloomberg L.P.

cc: Michelle Carey, Rick Chessen, Rudy Brioche, Amy Blankenship, Cristina Pauze, Marlene Dortch via ECFS